

Amendments to Senate Bill No. 309  
1st Reading Copy

Requested by Senator Joe Balyeat

For the Senate Judiciary Committee

Prepared by Valencia Lane  
February 6, 2007 (7:43am) ?

1. Title, line 5 through line 6.

**Following:** "DISASTER" on line 5

**Strike:** remainder of line 5 through "INCIDENT" on line 6

2. Title, line 8.

**Following:** line 7

**Strike:** "OR THE OCCURRENCE OF AN INCIDENT"

3. Page 1, line 16.

**Following:** line 15

**Strike:** "or the occurrence of an incident"

**Following:** "while"

**Insert:** "acting or"

4. Page 1, line 24.

**Following:** ";

**Strike:** "or"

5. Page 1, line 25.

**Following:** "firearm"

**Insert:** "; or

(D) in the course of normal and usual law enforcement practices when probable cause exists to believe that a particular firearm has been used to commit a crime"

6. Page 1, line 28.

**Strike:** subsection (d) in its entirety

**Renumber:** subsequent subsections

7. Page 2, line 3.

**Following:** line 2

**Insert:** "(f) "Person" means an individual human being."

8. Page 2, line 5.

**Following:** "disaster"

**Strike:** "or the occurrence of an incident"

9. Page 2, line 6.

**Following:** "person"

**Insert:** "acting or"

10. Page 2, line 13.

**Following:** "emergency"

**Strike:** ", "

**Insert:** "or"

11. Page 2, line 14.

**Following:** "disaster"

**Strike:** ", or incident"

12. Page 2, line 25.

**Following:** line 24

**Strike:** "approved by and"

13. Page 3, line 1.

**Following:** "understands"

**Strike:** "the construction of"

14. Page 3, line 1 through line 2.

**Following:** "4]" on line 1

**Strike:** remainder of line 1 through "construction," on line 2

15. Page 3, line 13.

**Following:** "person"

**Insert:** "acting or"

16. Page 3, line 14.

**Following:** "disaster"

**Strike:** "or the occurrence of an incident"

17. Page 3, line 17.

**Following:** "disaster"

**Strike:** "or the occurrence of an incident"

18. Page 3, line 19.

**Following:** the second "officer"

**Insert:** "acting or"

19. Page 3, line 20.

**Following:** "state"

**Strike:** "shall also take"

**Insert:** "or presuming to assert any authority on behalf of the  
state or a political subdivision of the state is presumed to  
be operating under"

20. Page 3, line 21.

**Following:** "officer"

**Strike:** "or other person"

21. Page 3, line 23.

**Following:** "state."

**Insert:** "Any other person acting or purporting to act on behalf of the state or any political subdivision of the state who fails to act according to the presumed oath required by this section forfeits any authority to act on behalf of the state or any political subdivision of the state."

22. Page 3, line 23 through line 24.

**Following:** "emergency" on line 23

**Strike:** remainder of line 23 through "incident" on line 24

23. Page 3, line 29.

**Following:** "emergency"

**Strike:** "or an executive order pertaining to an incident"

- END -

S. BILL NO. 309

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE CONFISCATION OF PRIVATELY OWNED

FIREARMS WITHIN THE STATE FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER OR

~~THE OCCURRENCE OF AN INCIDENT~~; PROVIDING CERTAIN RESTRICTIONS ON THE USE OF

NONRESIDENT PEACE OFFICERS FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER

~~OR THE OCCURRENCE OF AN INCIDENT~~; PROVIDING FOR ENFORCEMENT; AMENDING SECTIONS

7-32-302, 10-3-204, 10-3-207, 10-3-1001, 44-11-101, 44-11-302, 44-11-304, 44-11-306, AND 44-11-312, MCA;

AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. State policy on confiscation of private firearms -- definitions. (1) It is

the policy of the state of Montana that a person may not, following the declaration of an emergency or disaster

~~or the occurrence of an incident~~ pursuant to Title 10, chapter 3, and while purporting to act on behalf of the state

or a political subdivision of the state, confiscate a privately owned firearm of another person except as provided

in [sections 1 through 5].

(2) As used in [sections 1 through 5], the following definitions apply:

(a) (i) "Confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

(ii) The term does not include the taking of a firearm from a person:

(A) in self-defense;

(B) possessing a firearm while the person is committing a felony or misdemeanor; or

(C) who may not, under state or federal law, lawfully possess the firearm; or

(b) "Disaster" has the meaning provided in 10-3-103.

(c) "Emergency" has the meaning provided in 10-3-103.

~~(d) "Incident" has the meaning provided in 10-3-103.~~

(d) "Interested party" includes the owner of the firearm confiscated or to be confiscated and a person otherwise with sufficient interest in the outcome of the issue to satisfy the constitutional prerequisites for legal

(D) in the course of normal and usual law enforcement practices when probable cause exists to believe that a particular firearm has been used to commit a crime"

INTRODUCED BILL

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standing for the purposes of the civil action authorized by [section 5].

(c) "Peace officer" means a peace officer as defined in 46-1-202.

(d) "Person" means an individual human being.

**NEW SECTION. Section 2. Confiscation of firearm by government prohibited.** (1) Following a

declaration of an emergency or disaster ~~or the occurrence of an incident~~ pursuant to Title 10, chapter 3, a peace officer or other person <sup>acting or</sup> purporting to act on behalf of the state or a political subdivision of the state may not take a confiscation action.

(2) The attorney general, a county attorney, or an interested party may enforce the provisions of this section as provided in [section 5].

**NEW SECTION. Section 3. Agreement for employment of nonresident peace officers to be filed.**

(1) An entity authorized to employ, appoint, request the assistance of, use, or deputize a person as a peace officer may not take any of those actions with regard to a nonresident peace officer during an emergency, <sup>or</sup> disaster ~~or incident~~ unless:

(a) the entity executes a written agreement for the deployment of the nonresident peace officer in Montana and the agreement provides:

(i) where, when, and how the nonresident peace officer is to be deployed;

(ii) the state law, county resolution, city ordinance, or any of those documents that will be enforced by the nonresident peace officer;

(iii) the name, rank, badge number, and position of the nonresident peace officer to be deployed in Montana;

(iv) the source of the authority for bringing the nonresident peace officer to Montana and deploying the officer in this state;

(b) if one party to the agreement referred to in subsection (1)(a) is a city, the agreement has been ~~approved by and~~ filed with the county sheriff of the county in which the nonresident peace officer will be deployed before the peace officer is deployed to the officer's duties in this state;

(c) the person to be employed, appointed, requested, used, or deputized is a citizen of the United States;

(d) the person to be employed, appointed, requested, used, or deputized reads and signs the agreement required by subsection (1)(a) acknowledging that:

(i) the person has provided the correct information for use in the agreement;

or presuming to assert any authority on behalf of the  
60 state or a political subdivision of the state is presumed to LC0885.01  
be operating under"

(1) (ii) the person understands ~~the construction of~~ the Montana constitution as provided in [section 4], ~~agrees~~  
(2) ~~with that construction~~, and intends to abide by the terms of the oath the person has taken or will take to uphold  
3 the Montana constitution;

4 (e) the agreement required by subsection (1)(a) is filed with the clerk and recorder of the county in which  
5 the nonresident peace officer is to be used before the nonresident peace officer is deployed to the officer's duties  
6 in this state.

7 (2) An agreement that does not comply with the requirements of this section is void.

8 (3) [Sections 1 through 5] do not authorize the employment of a nonresident peace officer in this state.

9  
10 **NEW SECTION. Section 4. Constitution construed -- oath required -- effect of violation.** (1) The  
11 legislature construes Article II, sections 3, 12, 17, and 33, of the Montana constitution as including a prohibition  
12 against a confiscation action, as provided in [sections 1 through 5], by a resident or nonresident peace officer or  
(13) by any other person <sup>acting or</sup> purporting to act on behalf of the state or a political subdivision of the state following the  
(14) declaration of an emergency or disaster ~~or the occurrence of an incident~~.

15 (2) An entity authorized to employ, appoint, request the assistance of, use, or deputize a person as a  
16 peace officer shall, before deploying a nonresident peace officer to the officer's duties following the declaration  
(17) of an emergency or disaster ~~or the occurrence of an incident~~, as provided in Title 10, chapter 3, require that the  
18 peace officer take an oath to uphold the Montana constitution, and the entity shall administer the oath to the  
(19) nonresident peace officer. A person other than a peace officer <sup>acting or</sup> purporting to act on behalf of the state or a  
(20) political subdivision of the state ~~shall also take~~ an oath to uphold the Montana constitution. A nonresident peace  
(21) officer ~~or other person~~ required by this subsection to take an oath who fails to take the oath required by this  
22 section forfeits the authority to act as a peace officer or to act on behalf of the state or a political subdivision of  
(23) the state. A forfeiture is effective for the period of time that a declaration of disaster or emergency or an executive  
24 order pertaining to an incident is effective.

25 (3) A resident or a nonresident peace officer or other person who takes the oath required by this section  
26 who engages in a confiscation action after taking the oath violates the oath and forfeits the officer's authority of  
27 and status as a peace officer in this state or, if the person is not a peace officer, forfeits whatever authority the  
28 person possesses to act on behalf of the state or a political subdivision of the state. A forfeiture is effective for  
(29) the period of time that a declaration of disaster or emergency or an executive order pertaining to an incident is  
30 effective.

Any other person acting or purporting to act on behalf  
of the state or any political subdivision of the state who 1-LC 885  
fails to act according to the presumed oath required by this  
section forfeits any authority to act on behalf of the state  
or any political subdivision of the state."